

proposes to base its findings initially on the determination by the franchising authority. The Board supports this position and notes its extensive experience in regard to the cable industry and the economic regulation of other more traditional public utilities.

The Board requests the Commission provide, as part of these regulations, specific guidelines for franchising authorities for the evidence required to make a valid initial finding of a lack of effective competition. By meeting these specific guidelines, a franchising authority can be sure of its authority in a timely fashion. Specific operator challenges to a franchising authorities' finding of lack of competition, either at the beginning of regulation or a later time, should not be part of a revocation process of the entire franchising authorities' jurisdiction. Specific operator challenges should be determined first under the franchising authorities' administrative proceedings and then without pre-empting the entire franchising authorities' jurisdiction.

It is further recommended that the rate determination of the franchising authorities Commission be made on a franchise area basis only. In regard to the Commission rate setting for cable programming services, the Board recommends that the determination of the Commission also be made on a franchise area basis thus taking account of local conditions to the fullest extent possible.

However, while we agree with the Commission's decision to base its findings as to whether effective competition exists initially on the determination of the franchising

authority, we are greatly concerned with the Commission's finding that it is "reasonable to require that local franchising authorities provide evidence of the lack of effective competition as a threshold matter of jurisdiction." NPRM at paragraph 17. The type of evidence that the Commission would seek should not create a hurdle to the regulation of basic rates not envisioned by Congress. There are some types of information which could be readily available to the franchising authority, such as (1) whether "fewer than 30 percent of the households in the franchise area subscribe to the service of a cable system" or (2) if the franchise area "served by at least two unaffiliated multi-channel video programming distributors each of which offers comparable video programming to at least 50 percent of the household in the franchise area" if both of the video programming distributors are franchised cable television operators within the franchising authority's jurisdiction. However, it is unreasonable for the Commission to require a franchising authority to provide evidence concerning multi-channel video programming distributor entities beyond its jurisdiction such as "a multi-channel multi-point distribution service a direct broadcast satellite service, or a television receive-only satellite program distributor...." P.L. 102-385, Section 2, 106 Stat. 1463.

Given the state of development of multi-channel multi-point distribution services other than cable television operators, it does not appear necessary or productive to require such entities to submit to detailed reporting requirements to a cable television franchising authority so

that the franchising authority may submit a certification to the Commission. The more reasonable approach would be for the franchising authority to include in its request for certification a statement that the cable television operator is not subject to effective competition. If the cable television operator believes there is not a factual basis for that determination, it may seek appropriate relief. As suggested by the Commission at note 35 of the NPRM, multi-channel video programming distributors which are competitors of the cable operator would most likely view the information relevant to a competition determination (such as the number and general location of subscribers) as being proprietary. One method of establishing a rational approach to such difficulties would be to permit the franchising authority to compel relevant information from multi-channel video programming distributors not within the franchising authority's jurisdiction in those instances where the cable operator makes a prima facie showing that it is subject to effective competition. This would avoid a requirement that all non-cable television multi-channel video programming distributors provide information to franchising authorities which might never be needed and would permit a reasonable exercise of the Commission's responsibilities. Further, it is not unreasonable to expect that the cable television operator, through its own marketing activities, would have some information as to whether it is subject to effective competition.

#### VIII. EFFECTIVE DATE OF REGULATION

The Board believes that any rate regulation should take effect on December 5, 1992, the effective date of the Cable Act of 1992. Rate rollbacks, refunds and credits should begin from December 5, 1992, for rates found to be unreasonable under all aspects of the Cable Act of 1992, including but not limited to, basic tier cable service, cable programming services, equipment lease, rental or purchase rates, change of service fees and all installation fees charges under any chosen methodology for all of these items.

The Board believes the Commission should account for any anticipatory price increases by cable systems in the immediate past. Special consideration should be given to this possibility in the survey techniques employed by the Commission in its data collection and survey procedures. This should apply also to retiering efforts by operators prohibited by the Cable Act of 1992, and changes which may not be prohibited by the Cable Act of 1992 but will affect the rate and service and number of channels provided by a cable operator. Adjustment of raw data should include analysis and equalization of the level of service as measured by the number of channels.

#### IX. LOCAL PROCEDURES AND FLEXIBILITY

The Commission rules and procedures affecting franchising authorities, such as the Board, must permit the greatest flexibility possible under the Cable Act of 1992.


The Board believes that the franchising authority must be permitted to require uniform standard of service, uniform, financial reporting standards, uniform tariff procedures, uniform technical and safety requirements, and uniform customer protection and dispute resolution procedures. The Board believes that it is important that it be permitted to establish a Uniform System of Accounts. All permitted options under the Cable Act in 1992 in these areas should be retained by the franchising authorities. Existing procedures and regulatory schemes must be allowed to continue without interruption or challenge that is especially true when such systems of law and regulations are on a ongoing, statewide basis.

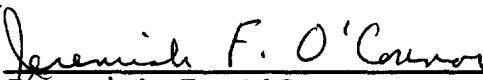
Further, the Board believes that disputes concerning appeals of a franchising authority's setting of basic rates should be left to the local courts as discussed at paragraph 87 of the NPRM. This is especially true in that we believe that it is not unlikely issues on appeal may involve procedural issues based on local statutes and regulation. The Commission should not pre-empt State courts in this area.

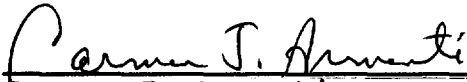
X. CONCLUSION

The Board submits these comments for the Commission's consideration in the above referenced matter.

BOARD OF REGULATORY COMMISSIONERS  
BY:

  
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Chairman

  
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January 26, 1993